

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE CENTRAL DISTRICT OF ILLINOIS**

IN RE:)	
)	
PAK BUILDERS,)	Case No. 00-82412
)	
Debtor.)	
_____)	
)	
CITIZENS SAVINGS BANK,)	
an Illinois state chartered savings bank,)	
Plaintiff,)	
)	
vs.)	Adv. No. 00-8145
)	
CHARLES COVEY, Trustee for PAK)	
BUILDERS, an Illinois general partnership,)	
et al.,)	
Defendants.)	

OPINION

Before this Court is the motion of Plaintiff, Citizens Savings Bank (“BANK”), for partial summary judgment on Counts 4, 7, and 8, concerning mechanics liens filed by Gingerich Plumbing Co. (“GINGERICH”) on real estate owned by PAK Builders (“DEBTOR”) at the time of DEBTOR’S bankruptcy filing. For the reasons stated below, this Court finds that GINGERICH failed to timely file its mechanics liens, leaving improperly perfected secured claims, creating unsecured claims junior to the prior mortgage lien claimed by the BANK.¹

On October 20, 2000, the BANK initiated this adversary proceeding to determine the status of any liens attached to six parcels of real estate under various stages of construction owned by the DEBTOR.² Currently, with the sole exception of GINGERICH, all mechanics lien claimants have withdrawn their lien claims or assigned their claims to the BANK. Consequently, this Opinion only

¹ The BANK’S claimed mortgage on the real estate is the subject of a separate but related action brought by the Trustee challenging the BANK’S claim pursuant to 11 U.S.C. § 544.

² These six parcels are designated as Lots 130, 135, 146, 193, 194, and 79.

addresses the mechanics liens claimed by GINGERICH and disputed by the BANK.³ Both parties agree on the applicable law and virtually all pertinent underlying facts including the amount of GINGERICH'S claims and the relevant dates that the underlying contracts were executed, the work was completed, and the mechanics liens were recorded. Those facts may be summarized as follows:

<u>Lot No. (Count)</u>	<u>Lien Amount</u>	<u>Last Date of Work</u>	<u>Date Lien Recorded</u>
146 (Count 4)	\$4,071.00	May 1, 2000	Oct. 30, 2000
193 (Count 7)	\$7,800.00	June 29, 2000	Oct. 30, 2000
194 (Count 8)	\$7,480.00	June 28, 2000	Oct. 30, 2000

Under Federal Rule of Civil Procedure 56(c), made applicable to adversary proceedings in bankruptcy by Federal Rule of Bankruptcy Procedure 7056, summary judgment will be granted if the pleadings, deposition, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. When deciding a motion for summary judgment, the court must determine whether there is any material dispute of fact requiring a trial, considering all evidence in the light most favorable to the non-moving party. *Roger v. Yellow Freight Systems, Inc.*, 21 F.3d 146, 148-49 (7th Cir.1994). The moving party bears the burden of proof that no issue of material fact exists. *Celotex Corp. v. Catrett*, 477 U.S. 317, 324, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986). If this burden is met, the non-moving party must establish by specific allegations that there is a genuine issue of material fact, requiring a trial to resolve these issues. *Id.* Finally, in actions involving real estate, the law of the state where the property is located controls the litigation. *U.S. v. 19.86 Acres of Land in East St. Louis, St. Clair County, Ill.*, 141 F.2d 344, 346 (7th Cir. 1944). Because all of the property in question is located in Illinois, the validity of the disputed mechanics liens is controlled by Illinois state law.

³ Of the six mechanic liens claimed by GINGERICH, the BANK does not dispute those on Lots 135 or 79 because GINGERICH filed these claims within four months from the last date work was performed. Further, GINGERICH does not claim a mechanics lien on Lot 130.

The Mechanics Lien Act of Illinois, 770 ILCS 60/1 et seq., provides that a contractor's lien upon land "for the amount due to him for such material, fixtures, apparatus, machinery, services or labor" attaches on the date of contract at an interest rate of ten percent (10%). The BANK does not challenge GINGERICH'S right to assert a mechanics lien. Instead, the BANK challenges GINGERICH'S compliance with Section 7 of the Mechanics Lien Act, which provides, in pertinent part:

No contractor shall be allowed to enforce such lien against or to the prejudice of any other creditor or encumbrancer or purchaser, unless within 4 months after completion, or if extra or additional work is done or material is delivered therefor within 4 months after the completion of such extra or additional material, he or she shall either bring an action to enforce his or her lien therefor or shall file in the office of the recorder of the county in which the building, erection or other improvement to be charged with the lien is situated, a claim for lien, verified by the affidavit of himself or herself, or his or her agent or employee, which shall consist of a brief statement of the contract, the balance due after allowing all credits, and a sufficiently correct description of the lot, lots or tracts of land to identify the same.

770 ILCS 60/7.

The parties' dispute focuses on differing definitions and implications of the "completion" of GINGERICH'S work. GINGERICH argues that because of the staggered nature of plumbers' work on such construction contracts, its work was not completed and compliance with any filing deadlines had consequently not begun running.⁴ GINGERICH contends that because the work to be performed was covered by one contract and was to be performed in stages over a period of time, it could wait to file a mechanics lien until all relevant work under the contract had been completed. The BANK argues that for a mechanics lien to attach, the contractor must file its lien within four months of the last date the work forming the basis of the claim was performed regardless of whether all contract work was completed. Because GINGERICH'S liens were filed more than four months after the last date it

⁴ GINGERICH asserts, uncontroverted by the BANK, that plumbing companies on such constructions work at the site early to bring water to the site, return to perform "rough in" work after pouring the basement and framing the structure is completed, and finally return near the end to install fixtures.

performed work on all three lots at issue, the BANK contends that GINGERICH'S lien claims are unenforceable.

Unfortunately for GINGERICH, Illinois law on the subject is clear and ultimately fatal to its position. Illinois caselaw explicitly holds that "completion" as applicable in the mechanics lien statute means "completion of the work for which a contractor seeks to enforce his lien." *Merchants Environmental Industries, Inc. v. SLT Realty Ltd. Partnership*, 314 Ill.App.3d 848, 731 N.E.2d 394, 401, 246 Ill.Dec. 866 (1st Dist. 2000) quoting *D.M. Foley Co., Inc. v. North West Federal Sav. and Loan Ass'n*, 122 Ill.App.3d 411, 461 N.E.2d 500, 502, 77 Ill.Dec. 877 (1st Dist. 1984).⁵ GINGERICH is attempting to enforce liens for work completed four months previous to its filing, outside of the time frame explicitly stated in the Illinois mechanics lien statute. Accordingly, this Court holds that GINGERICH'S mechanics liens on Lots 146, 193, and 194 are invalid as secured claims.

This Opinion constitutes this Court's findings of fact and conclusions of law in accordance with Federal Rule of Bankruptcy Procedure 7052.

See written Order.

Dated: March 15, 2002.

WILLIAM V. ALTENBERGER
UNITED STATES BANKRUPTCY JUDGE

Copies to:

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U.S. Trustee, 401 Main Street, Suite 1100, Peoria, Illinois 61602

⁵ Case law interpreting the current Illinois Mechanics Lien statute and its predecessors has been remarkably consistent, as this interpretation can be found largely unchanged in multiple cases, e.g., *Daily v. Mid-America Bank and Trust Co. of Carbondale*, 130 Ill.App.3d 639, 474 N.E.2d 788, 830-31, 85 Ill.Dec. 828 (5th Dist. 1985); *Components, Inc. v. Walter Kassuba Realty Corp.*, 64 Ill.App.3d 140, 381 N.E.2d 42, 45, 21 Ill.Dec. 107 (2nd Dist. 1978), dating as far back as *W.G. Wood Co. v. Nysewander*, 187 Ill.App. 354 (1914).

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CHARLES COVEY, Trustee for PAK)	
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ORDER

For the reasons stated in an Opinion filed this day, IT IS HEREBY ORDERED that the Motion for Partial Summary Judgment filed by CITIZENS SAVINGS BANK on Counts 4, 7, and 8 is hereby GRANTED as to the mechanics liens claimed by GINGERICH and Judgment is hereby entered in FAVOR of CITIZENS SAVINGS BANK and AGAINST GINGERICH regarding those claims.

Dated: March 15, 2002.

WILLIAM V. ALTENBERGER
UNITED STATES BANKRUPTCY JUDGE

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Andrew J. Lankton
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Andrew W. Covey
U.S. Trustee